UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
WATER AND
WATERSHEDS

FEB 5 2013

Mr. Brian Crossley
Water Resource Program Manager
Spokane Tribe of Indians
Department of Natural Resources
PO Box 480
Wellpinit, Washington 99040

Dear Mr. Crossley:

On November 23, 2012, the U.S. Environmental Protection Agency sent to the Spokane Tribe a letter offering consultation on and review of the preliminary draft National Pollutant Discharge Elimination System (NPDES) permits for publicly owned treatment works (POTWs) discharging to the Spokane River in Idaho. We thank you for the comments that you provided to Brian Nickel, of my staff, on December 20, 2012 and January 3, 2013.

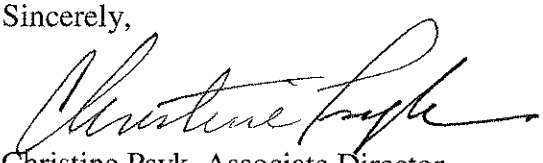
The comments focused primarily on polychlorinated biphenyls (PCBs) and dioxin (2,3,7,8 TCDD), and imply that numeric water quality-based effluent limits must be established for PCBs in the draft permits. Detailed responses to your comments regarding PCBs and dioxin are provided in the enclosure.

As I communicated to you when we spoke on the telephone last week, we do not plan to include numeric effluent limits for PCBs or dioxin in the draft permits for public comment. We support the goal of the Spokane River Regional Toxics Task Force (SRRTTF) to make measurable progress toward bringing the Spokane River into compliance with applicable water quality standards for PCBs, and we intend to sign the SRRTTF memorandum of agreement (MOA) once the NPDES permits for Idaho dischargers are finalized. In our view, the SRRTTF should be given an adequate opportunity to achieve its goal, and participation in the SRRTTF is the preferred option at this time for achieving toxics loading reductions in the Spokane River. We also strongly believe the SRRTTF will be more successful in achieving this goal if the Spokane Tribe and conservation groups actively participate. Numeric toxics control remains an option once we have better data, an appropriate test method approved for use in NPDES permits, and in the event that the SRRTTF fails to achieve measurable reductions in PCB loads.

We plan to issue these permits for public review and comment within the next few weeks. The Tribe may, of course, submit comments during the public comment period, and the EPA will consider and respond to such comments. After the public comment period closes, the EPA will request final Clean Water Act Section 401 certifications of these permits from the State of Idaho. After the EPA receives the final certifications, we will notify the Tribe, the State of Washington, and the permittees, consistent with Section 401(a)(2) of the Clean Water Act.

If you would like to discuss the issues addressed in this letter further or would like additional information, please contact me at 206-553-1906 or by e-mail at psyk.christine@epa.gov.

Sincerely,



Christine Psyk, Associate Director
Office of Water and Watersheds

Enclosure

Responses to the Comments Provided by the Spokane Tribe of Indians on Preliminary Draft NPDES Permits for POTWs Discharging to the Spokane River in Idaho February 2013

Numeric PCB Limits

Lack of Data

As stated in the fact sheets, it is currently infeasible to calculate numeric water quality-based effluent limits for PCBs and 2,3,7,8 TCDD due to the lack of data. The lack of data also prevents the EPA from determining whether the Idaho publicly owned treatment works (POTWs) have the reasonable potential to cause or contribute to excursions above any of the affected jurisdictions' water quality standards for PCBs or 2,3,7,8 TCDD. None of the National Pollutant Discharge Elimination System (NPDES) permits for POTWs discharging to the Spokane River in Idaho or Washington have numeric effluent limits for PCBs or 2,3,7,8 TCDD.

Under NPDES regulations, best management practices (BMPs) may be required in lieu of numeric effluent limits when numeric effluent limits are infeasible or when they are reasonably necessary to carry out the purposes and intent of the Clean Water Act (40 CFR 122.44(k)). The permits include BMP requirements intended to reduce the discharges of PCBs and 2,3,7,8 TCDD.

Analytical Methods and Detection Limits

The comments from Environmental Stewardship Concepts, LLC (ESC) imply that the EPA could "set the permit limit at the level of detection for monitoring, as listed in the fact sheet, 10 pg/L" (see ESC comments at 4). Achieving method detection limits (MDLs) for PCBs of this order of magnitude would require the use of EPA Method 1668, which is not approved for use in NPDES permits. As explained in the fact sheets (see, e.g., Coeur d'Alene fact sheet at 27), EPA regulations state that, in order to assure compliance with permit limitations, NPDES permits must require the use of methods approved under 40 CFR Part 136. The only methods currently approved under 40 CFR Part 136, for PCBs, are EPA Methods 608 and 625 and Standard Method 6410 B-2000. Among these methods, the lowest detection limit is 65,000 pg/L, which is orders of magnitude greater than any of the applicable water quality criteria in the affected jurisdictions. Thus, numeric effluent limits for total PCBs enforced using currently approved methods would be meaningless.

Nevertheless, for the purpose of monitoring, the EPA may require the use of more-sensitive methods (i.e., Methods 1668 and 8082) in the permits because the permits require analysis of PCB congeners, and none of the methods approved under 40 CFR 136 are capable of analysis for PCB congeners (i.e., they only analyze for PCB Aroclors).

The situation is similar for analytical methods for 2,3,7,8 TCDD. As stated in the fact sheets, the detection limit of the most-sensitive analytical method (EPA Method 1613B) is 4.4 picograms per liter, which is much greater than the water quality criteria for any of the affected

jurisdictions. Unlike the analytical methods for PCBs, there is no alternative to the methods approved for nationwide use under 40 CFR Part 136 that is significantly more sensitive.

Idaho Dischargers' Participation in the Task Force

The Tribe's comments expressed uncertainty as to why the preliminary draft permits require the Idaho POTWs to participate in the SRRTTF, when the EPA had previously stated that it did not have the authority to require such participation. The draft permits contain a requirement to participate in the task force because the permittees and conservation groups mutually agreed that the permits should include language requiring such participation. Absent a request from the permittees to include that provision in the permits, EPA would not have agreed to do so under these circumstances.

Dioxin Monitoring

With respect to monitoring for dioxin, the comments from ESC point out that the draft permits only require monitoring for 2,3,7,8 TCDD. While the EPA understands that there are other congeners of dioxins and furans that are toxic, 2,3,7,8 TCDD is the most toxic, and it is the only dioxin or furan congener for which water quality criteria have been established by any of the affected jurisdictions. If the EPA required monitoring of dioxins and furans other than 2,3,7,8 TCDD, the data generated by such monitoring may not be useful in developing effluent limits.

Combinations of Pollutants

Because the discharges originate in Idaho, the draft permits include conditions necessary to meet Idaho's water quality standards (WQS). Similar to the Spokane Tribe's WQS, the Idaho WQS address combinations of pollutants. The Idaho WQS define "toxic substance," in relevant part, to be "any substance, material or disease-causing agent, *or a combination thereof*, which after discharge to waters of the state and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring" (emphasis added). [IDAPA 58.01.02.010.101] The draft permits address combinations of pollutants through the whole effluent toxicity testing requirements in the permits.

Applicable Water Quality Criteria for PCBs and Dioxin in Idaho

As stated in the fact sheets, Idaho's PCB water quality criterion that is in effect under state law is 64 pg/L, and the 2,3,7,8 TCDD criterion that is in effect under Idaho state law is 0.005 pg/L. However, the EPA has disapproved these criteria and therefore they are not in effect for Clean Water Act (CWA) purposes (see 40 CFR 131.21(c)(2)).

The EPA understands that the State of Idaho's prior criteria for these and other pollutants, which are still in effect for CWA purposes, are less stringent than those that were recently disapproved. Thus, the EPA has urged the State of Idaho to continue to implement the more stringent criteria that are in effect under State law, until more protective revisions are adopted. For example, the

State of Idaho could state in its CWA Section 401 certification of an NPDES permit that the EPA must use the criteria adopted under state law, to develop permit conditions, in which case the EPA would be obligated to do so (see 40 CFR 124.124.53(e) and 124.55(a)(2)).

In this case, the EPA is not establishing numeric limits for PBCs or 2,3,7,8 TCDD, for the reasons described above. Therefore, the fact that the draft CWA Section 401 certifications are silent on PCBs and 2,3,7,8 TCDD does not affect the draft permit conditions.

Attachment E